

BEFORE THE ARIZONA OFFICE OF PEST MANAGEMENT

In the Matter of:

FUMI-MEX EXTERMINATING, holder of
Business License No. 8181, LUIS LOPEZ,
holder of Qualifying Party License No. 8180,
MANUEL LOPEZ, holder of Applicator
License No. 991210, for Performing the
Business of Structural Pest Control in the
State of Arizona,
Respondents.

Case No.: 100092

CONSENT AGREEMENT
AND
ORDER

The Acting Director of the Arizona Office of Pest Management ("OPM") considered the above matter and offers Respondents this Consent Agreement.

This complaint, stemming from a consumer, contains allegations that on April 27, 2009, a Fumi-Mex employee performed a Termite Treatment and issued a (2) year Termite Warranty without the benefit a Qualifying Party License or an Applicator License in the B-2, Wood Destroying Insect Treatment category, as required by A.R.S. 32-2325(2)(5). The applicator also failed to follow the Label instructions when applying the termiticide because he had never been Trained or Supervised by the Qualifying Party regarding such applications, which is grounds for discipline per A.R.S. -32-2321(B)(4)(5).

CONSENT AGREEMENT

RECITALS

In the interest of a prompt and judicious resolution of this matter, consistent with the public interest, statutory requirements and responsibilities of the Office Of Pest Management (OPM), and under A.R.S. §§ 32-2301, et seq., and 41-1092.07(F)(5), FUMI-MEX EXTERMINATING, ("Fumi-Mex" or "Respondent"), holder of Business License No. 8181, LUIS LOPEZ ("L. Lopez" or "Respondent"), holder of Qualifying Party License No. 8180,

1 **MANUEL LOPEZ** ("M. Lopez" or "Respondent"), holder of Applicator License **No. 991210**, for
2 performing pest management services in the State of Arizona, and the OPM enter into the
3 following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as
4 the final disposition of this matter.

5 1. Respondents have read and understand this Consent Agreement as set forth
6 herein, and have been provided the opportunity to discuss this Consent Agreement with an
7 attorney. Respondents voluntarily enter into this Consent Agreement for the purpose of
8 avoiding the expense and uncertainty of an administrative hearing.
9

10 2. Respondents understand that they have a right to a public administrative hearing
11 concerning the above-captioned matter, at which administrative hearing they could present
12 evidence and cross-examine witnesses. By entering into this Consent Agreement,
13 Respondents knowingly and voluntarily relinquish all rights to such an administrative hearing,
14 as well as all rights of rehearing, review, reconsideration, appeal, judicial review or any other
15 administrative or judicial action, concerning the matters set forth herein. Respondents
16 affirmatively agree that this Consent Agreement shall be irrevocable.

17 3. Respondents understand that this Consent Agreement or any part of the
18 Agreement may be considered in any future disciplinary action by the OPM against them.
19

20 4. Respondents understand this Consent Agreement concerns OPM **Complaint No.**
21 **100092**, which contains grounds to discipline Respondent's licenses.

22 5. All admissions made by Respondents in this Consent Agreement are made solely
23 for the final disposition of this matter, and any related administrative procedures involving the
24 OPM and Respondents. Therefore, any admissions made by Respondents in this Consent
25 Agreement are not intended for any other use.

6. Respondents acknowledge and agree that upon signing this Consent Agreement and returning this document to the OPM, Respondents may not revoke their acceptance of this Consent Agreement or make any modifications to the document. Any modification to this original document is ineffective and void unless mutually approved by the parties in writing.

7. Respondents understand that the foregoing Consent Agreement shall not become effective unless and until adopted by the OPM and signed by its Acting Director or designee. This Consent is effective the date signed by the Acting Director or designee.

8. Respondents understand and agree that if the OPM does not adopt this Consent Agreement, they will not assert as a defense that the Acting Director's consideration of this Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

9. Respondents understand that this Consent Agreement is a public record that may be publicly disseminated as a formal action of the OPM.

10. Respondents understand that any violation of this Consent Agreement constitutes grounds for disciplinary action under A.R.S. § 32-2321(B) and may result in disciplinary action under A.R.S. § 32-2321(A).

11. If accepting and agreeing to this Consent Agreement on behalf of a company or entity, the person signing affirms that they have the authority to enter into the Consent Agreement and bind the company to the terms and conditions of this Consent Agreement.


Fumi-Mex Exterminating
Licensed Business

02/18/10
Date Signed


Luis Lopez
Licensed Qualifying Party

02/18/10
Date Signed

1 Manuel Lopez
2 Licensed Applicator

2/17/10
Date Signed

3 FINDINGS OF FACT

4
5 12. On May 07, 2009, a consumer, shopping for homes, telephoned the OPM and
6 stated that Fumi-Mex performed a Termite Treatment for the sale of a home, but the company
7 did not hold a B-2 category license, which is necessary to perform such a treatment.

8 13. OPM Inspector George Schellhorn investigated the allegations and learned that
9 Applicator M. Lopez performed (2) treatments, one application on April 27, 2009 and another
10 application on May 06, 2009. M. Lopez charged a (\$350.00) fee and issued a (2) year
11 warranty in connection with the May 06, 2009 treatment.

12 14. Inspector Schellhorn reviewed the OPM records and noted that Fumi-Mex, the
13 Applicator, M. Lopez, nor the Qualifying Party, L. Lopez, held a Qualifying Party License or
14 Applicator license to perform termite work.

15 15. During the interviews, M. Lopez alleged that he did not know that he could not
16 perform a termite treatment without a B-2 category license. L. Lopez alleged that he was not
17 aware that his brother performed the termite treatments as they have a business arrangement
18 whereby they both work for Fumi-Mex. However, they generate their own income and
19 accounts. L. Lopez' statements revealed a lack of supervision as a Qualifying Party.

20
21 CONCLUSIONS OF LAW

22 16. The conduct and circumstances described in the Findings of Fact constitute
23 grounds for disciplinary action against **Fumi-Mex Exterminating**, holder of **Business**
24 **License No. 8181**, pursuant to A.R.S. § 32-2321(A) (Disciplinary action) for a violation of
25 A.R.S. § 32-2321(B)(1)(Violating laws and rules), via: A.R.S. § 32-2325(2)(5) (Engaging in the

1 business of pest management without the benefit of a Qualifying Party or Applicator License
2 in the B-2 category) and A.R.S. § 32-2321(B)(4) (Applying pesticides inconsistent with Label
3 instructions) due to A.R.S. 32-2308 (Joint Responsibility).

4 17. The conduct and circumstances described in the Findings of Fact constitute
5 grounds for disciplinary action against **Luis Lopez**, holder of **Qualifying Party License No.**
6 **8180**, pursuant to A.R.S. § 32-2321(A) (Disciplinary action) for a violation of A.R.S. § 32-
7 2321(B)(1)(Violating laws and rules), via: A.R.S. 32-2321(B)(5) (Applicator misused pesticide
8 due to a lack of supervision) and A.R.S. 32-2325(2) (Engaging in the business of pest
9 management without the benefit of a qualifying party license in the B-2 category), due to
10 A.R.S. 32-2308 (Joint Responsibility).

12 18. The conduct and circumstances described in the Findings of Fact constitute
13 grounds for disciplinary action against **Manuel Lopez**, holder of **Applicator License No.**
14 **991210** pursuant to A.R.S. § 32-2321(A) (Disciplinary action) for a violation of A.R.S. § 32-
15 2321(B)(1)(Violating laws and rules), via: A.R.S. 32-2325(2)(5) (Engaging in the business of
16 pest management without the benefit of an applicator license in the B-2 category) and A.R.S.
17 32-2321(B)(4) (Applying pesticides inconsistent with label requirements), due to A.R.S. 32-
18 2308 (Joint Responsibility).

19 ORDER

20 19. Based upon the above Findings of Fact and Conclusions of Law:

21 20. **IT IS ORDERED** that **FUMI-MEX EXTERMINATING**, holder of **Business License**
22 **No. 8181**, be issued an **Administrative Warning (Effective as of the date of the Order)**.

23 21. **IT IS FURTHER ORDERED** that **LUIS LOPEZ**, holder of **Qualifying Party**
24 **License No. 8180**, be issued an **Administrative Warning** and pay a **(\$500.00) Civil Penalty**
25

(The Civil Penalty shall be divided into three payments of (\$166.00), (\$166.00), with the last payment of (\$168.00), due on the (16th) of each month, beginning as of the date the Order is signed).

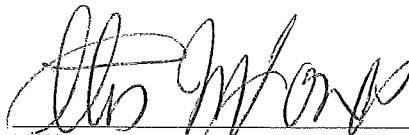
22. IT IS FURTHER ORDERED that Manuel Lopez, holder of Applicator License No. 991210, be issued an Administrative Warning, reimburse the consumer (\$350.00) by November 16, 2009, submit evidence to the OPM of the payment and pay a (\$150.00) Civil Penalty (Civil Penalty due within (30) days from the date the Order is signed).

Entered this 24TH day of FEBRUARY 2010.

[SEAL]



ARIZONA OFFICE OF PEST MANAGEMENT


Ellis M. Jones, Acting Director

Original "Consent Agreement and Order"
filed this 24TH day of FEBRUARY
2010, with the:

OPM
9535 E. Doubletree Ranch Road
Scottsdale, AZ 85258

Copies of the foregoing mailed
via certified and regular U.S. Mail
this 24TH day of FEBRUARY
2010, to:

1 FUMI-MEX EXTERMINATING
2 ATTN: LUIS LOPEZ
3 [REDACTED]

4 CERTIFIED MAIL: 7008 1300 0001 2302 1550

5 MANUEL LOPEZ
6 [REDACTED]

7 CERTIFIED MAIL: 7008 1300 0001 2302 1543

8 By _____
9

10 Dirk S. VandenBerg, Sr.
11 Regulatory Compliance Specialist
12
13
14
15
16
17
18
19
20
21
22
23
24
25